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Agency Secretary

California Regional Water Quality Control Board
North Coast Region
Beverly Wasson, Chairperson

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Arnold
Schwarzenegger
Governor

June 6, 2005

Mr. Phillip Wright
Telesite Corporation
c/o George Rau
100 North Pine Street
Ukiah, CA 95482

Dear Mr. Wright:

Subject: Issuance of Clean Water Act Section 401 Certification (Water Quality Certification) for the Vichy Springs Community Homes – Unit 2 Residential Subdivision Project, Vichy Springs Road, Ukiah, Mendocino County

File: Vichy Springs Community Homes – Unit 2 Residential Subdivision Project, Vichy Springs Road, Ukiah, Mendocino County
(WDID No. 1B03190WNME)

On October 27, 2003, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from Mr. George Rau of Rau and Associates Civil Engineers, on behalf of Mr. Phillip Wright and Telesite Corporation, requesting a Water Quality Certification and/or Waste Discharge Requirements for Dredge/Fill Projects (Water Quality Certification) for the Vichy Springs Community Homes – Unit 2 residential development Project in Mendocino County. Regional Water Board staff member Andrew Jensen met with Mr. Rau and Cathy McKeon of Rau and Associates, to walk the site and discuss impacts and proposed mitigation measures. Mr. Jensen notified Mr. Rau and Ms. McKeon of the need to revise the application and associated mitigation plan to address all associated impacts.

By letter dated February 10, 2004, Water Board Staff indicates the application was incomplete and requested additional information. On July 19, 2004, Mr. Jensen again met with the project applicants and a staff member of Fish and Game, Ms. Corrine Gray out on site to discuss the mitigation plans. A revised *Oak Woodlands, Watercourse and Wetlands Mitigation and Monitoring Plan*, dated October 2004, was submitted by the project applicants and received on January 10, 2005. This public notice is based on the information presented in the revised plan. The proposed project causes disturbances to waters of the state associated with seasonal wetland habitat and intermittent waterways in the Sulphur Creek Watershed, Ukiah Hydrologic Sub Area No. 114.31 and the Russian River Hydrologic Unit No. 114.00.

Project Description: The proposed project is located on a 68-acre parcel, off Vichy Springs Road, approximately 2.5 miles east-northeast of downtown

California Environmental Protection Agency

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Ukiah, Mendocino County, California (APN 178-210-03). The purpose of the project is to subdivide the 68-acre parcel in a four-phase subdivision with approximately 76-single-family homes.

The proposed project is a planned development which during Phase 1 shall consist of 24 residential Lots and the Common Area, Parcel A, and all improvements, including creation of roads, waterway crossings, and various infrastructure. Phase 2, if annexed, is expected to contain an additional 23 residential Lots. Phase 3, if annexed, is expected to contain an additional 14 residential Lots, and Phase 4, if annexed, will contain an additional 15 residential Lots.

The development of the project includes impacts to oak woodland habitat, seasonal waterways and associated riparian habitat and seasonal wetland habitat. According to the *Oak Woodlands, Watercourse and Wetlands Mitigation and Monitoring Plan*, dated October, 2004, proposed impacts to oak woodland habitat and tree removal within the Vichy Springs Community Homes-Unit 2 project were identified as a potential significant impact by the California Department of Fish and Game (DFG) personnel during the on-site inspection for 1603 permit approval.

In accordance with DFG personnel request, an oak woodland revegetation mitigation and monitoring plan was incorporated into the overall *Oak Woodlands, Watercourse and Wetlands Mitigation and Monitoring Plan*, dated October 2004 (MMP). The MMP once implemented, will result in the restoration of approximately three acres of "transitional" mixed oak woodland habitat, with the planting of 528 trees to mitigate for the removal of approximately 250 trees, mostly California native oak tress. The Mitigation areas are a combination of open space areas owned by the homeowner's association (HOA) and open space under private ownership. The mitigation efforts will be maintained and monitored for three years according to the protocols outlined in the MMP.

Proposed impacts to wetland and stream habitat within the Vichy Springs Community Homes-Unit 2 project were identified as potential significant impacts by Regional Water Board and DFG staff during on-site inspections associated with the application for Water Quality Certification. At the request of the Regional Water Board, the original application submittal was revised to include a wetland and stream mitigation plan, which is outlined in the MMP. This document outlines the replacement of approximately 0.15 acres of freshwater emergent wetland habitat that will be impacted

as a result of excavation in an isolated “man-induced” wetland feature located just south of the terminus of Tehuacan Road. In addition, the MMP outlines mitigation measures for the impacts of approximately 587 lineal feet of watercourse, resulting from road and utility construction within the project scope.

Receiving Water: Seasonal wetland habitat and intermittent waterways in the Sulphur Creek Watershed, Ukiah Hydrologic Sub Area No. 114.31 and the Russian River Hydrologic Unit No. 114.00.

Filled or
Excavated Area: Total Wetland Area Impacted: 0.15 acres of wetland habitat
Area Temporarily Impacted: 0.00 acres
Area Permanently Impacted: 0.15 acres

Total Linear Impacts: 587.0 linear feet impacted
Length Temporarily Impacted (Restored): 0.000 linear feet
Length Permanently Impacted (Not Restored): 587.0 linear feet

Compensatory
Mitigation Overview: Total Mitigation Area: 0.30 acres
Wetland Created/Restored: 0.30 acres
Wetland Enhanced: 0.00 acre
Wetland Existing (Avoided): 0.00 acre

Total Linear Mitigation: 2,026 linear feet
Linear Stream Restored: 0.00 linear feet
Linear Stream enhanced: 2,026 linear feet

Compensatory
Mitigation: The wetland habitat on the site that will be removed as part of the project, occurs on Lot 23, and is comprised of a shallow inadvertently man-made depressional feature of approximately 0.15 acre in size. Obligate and facultative wetland indicator species were found in the wetland feature, and the habitat quality was found to be low by biologists working for Mad River Biologists. The *Oak Woodlands, Watercourse and Wetlands Mitigation and Monitoring Plan*, dated October 2004 (MMP) originally called for mitigation to occur at a 1:1 ratio, however, Regional Water Board staff had concerns with the temporal loss of wetland habitat, and required a mitigation ratio of 1.5:1 on-site. The goal of the compensatory mitigation is to fully compensate for biotic impacts to the seasonal wetland habitat with in-kind mitigation. The proposed wetland replacement program provides

for construction of three interconnected wetland ponds, including two new wetland ponds and reconstruction and enhancement of a pre-existing failed stock pond (0.30). The three ponds are sited in the open space area, and will occupy two benches on an inter-fluvial slope between Watercourses 1 and 2. Revegetation of the mitigation wetlands will be accomplished through the transplanting of native obligate, facultative, and wetland transition species from the impacted Lot 23 wetland feature.

The MMP outlines the monitoring plan and the related success criteria and the maintenance of the wetland mitigation area. If the success criteria have not been met at the end of the proposed three-year monitoring period, monitoring will be continued for another two years, or for a total of five years. Annual reports will be prepared by a qualified biologist, botanist, or restoration ecologist, and will include all maintenance activities performed, a summary of vegetation cover data, and notes on hydrology and soil characteristics. If criteria are not met within five years, additional mitigation and/or remediation measures may be implemented by the project applicant at the discretion of the Regional Water Board.

In order to protect the wetland mitigation area in perpetuity, a restrictive covenant deed has been prepared by the applicant and approved by the California Department of Fish and Game and the Regional Water Board. The restrictive covenant deed was signed and recorded in the Mendocino County Recorder's Office, and a copy was submitted to the Regional Water Board.

Impacts to watercourses resulting from the proposed project where thought to be significant by Regional Water Board and DFG staff, and therefore the applicant was required to address avoidance, minimization, and mitigation in the MMP. Through 2 reiterations of draft mitigation plans, the project applicant addressed the concerns of Regional Water Board and DFG staff, and reduced the impacts to the watercourses and increased the scope of the watercourse mitigation plan. The final MMP describes the overall impacts and proposed mitigation measures related to the impacted watercourses on the site. There are a total of 567 lineal feet of

watercourse impacted as a result of road and utility construction within the project. Regional Water Board and DFG staff met with the project applicant several times on-site, and determined that the impacts to the watercourses could be mitigated through either a 1:1

watercourse replacement on-site, or a 2:1 enhancement of existing watercourses on-site. Due to the steep terrain and limited area, the project applicant determined that the 2:1 enhancement ratio was the only viable mitigation option.

The watercourses chosen for enhancement exhibit down cutting and erosion, and will require the placement of log check dams for grade control. The final mitigation for impacts to the on-site watercourses involves in-channel restoration and streambank enhancement, as well as riparian habitat restoration along 2,026 lineal feet of watercourse, which results in a mitigation ratio of 3.45:1. All watercourse mitigation will be performed in accordance with the protocols outlined in the MMP and the DFG Stream Restoration Manual. Restoration and enhancement activities will include the installation of wood check dams, native material revetments, coarse woody debris placements, and riparian plantings. All specific measures and the required maintenance and monitoring are outlined in the MMP. All instream work will be performed between June 15 and October 15, unless the project applicant obtains time extensions from the Regional Water Board and DFG.

Noncompensatory
Mitigation:

Non-compensatory mitigation measures include the use of erosion control Best Management Practices (BMPs), and post-construction storm water treatment controls that will be incorporated into the development project in order to decrease potential detrimental impacts associated with storm water runoff from the developed site. Much of the planning to establish and maintain post-construction BMPs for the treatment of storm water runoff from the proposed project will be handled through the provisions for open space buffers between watercourses and developed areas, both on private lots and in the common area of the subdivision. Through the Covenants, Conditions, and Restrictions (CC&Rs) for the project, the open space is restricted as to the use, and is maintained in perpetuity. In general, the building areas are separated from areas near watercourses by at least 20 feet, and generally extend from 40 to 150

feet between the building envelope and adjacent watercourses. This is designed to allow runoff from the building envelope and landscaped areas to be treated as overland flow through filter strips of native vegetation before reaching watercourses. The overall open space of the project covers approximately 52 percent of the site.

An evaluation of the storm water collection and disposal system within the paved areas was made for the purpose of identifying areas where storm water could be collected and treated in natural channels/swales prior to being released into the existing watercourse system. Due to the steep gradient of much of the site (15-20 percent), and the numerous watercourses on the site, treatment swales were impractical. Energy dissipaters and overland sheet flow through filter strips were incorporated into the project design, and well as drop inlet filter inserts which were specified on all inlets which are adjacent to street pavement areas. The maintenance of the storm water filters is provided for through the CC&Rs for the project.

Federal Permit: The applicant applied for a U.S. Army Corps of Engineers (ACOE) Clean Water Act Section 404 permit (CWA 404), and the ACOE issued a Nationwide No. 27 CWA 404 on February 16, 2005 (File Number 283220N).

State and Local Approvals: The applicant applied for a Lake and Streambed Alteration Agreement from the California Department of Fish and Game. The Lake and Streambed Alteration Agreement for the proposed project is pending at this time.

CEQA Compliance: The County of Mendocino, as the lead California Environmental Quality Act (CEQA) agency, has determined that this project qualifies for a Negative Declaration pursuant to the California Environmental Quality Act (CEQA) (Case # S 5-87/#UM 28-85/87A)

Standard Conditions: Pursuant to Title 23, California Code of Regulations (CCRs), Section 3860 (23 CCRs 3860), the following three standard conditions shall apply to this project:

- 1) This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the California Water Code and 23 CCRs 3867.
- 2) This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent

certification application was filed pursuant to 23 CCRs 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

- 3) The validity of any nondenial certification action (actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCRs 3833, unless otherwise stated in writing by the certifying agency.

Additional Conditions: Pursuant to 23 CCRs 3859(a), the applicant shall comply with the following additional conditions:

- 1) The Regional Water Board shall be notified in writing at least five working days (working days are Monday – Friday) prior to the commencement of grading work, with details regarding the construction schedule, in order to allow staff to be present on-site during construction, and to answer any public inquiries that may arise regarding the project.
- 2) No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this permit, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State. When operations are completed, any excess material or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream.
- 3) BMPs for sediment and turbidity control shall be implemented and in place prior to, during, and after construction in order to ensure that no silt or sediment enters surface waters.
- 4) A copy of this permit must be provided to the Contractor and all subcontractors conducting the work, and must be in their possession at the work site.

- 5) If, at any time, a discharge to surface waters occurs, or any water quality problem arises, the project shall cease immediately and the Regional Water Board shall be notified promptly.
- 6) The overall design and development of the Vichy Springs Community Homes – Unit 2 Subdivision shall include the post-construction storm water BMPs outlined in the *Oak Woodlands, Watercourse and Wetlands Mitigation and Monitoring Plan, October, 2004*, that have been prepared by Rau and Associates with peer review by Schaaf and Wheeler (Rau Job No. R01281) for incorporation into the project to mitigate for storm water discharges associated with post-development of the site. BMPs shall be implemented into the project, as proposed by the project applicant and Rau and Associates, and as outlined above in the Non-compensatory mitigation section of this order.
- 7) The project applicant shall implement compensatory mitigation as proposed in the application package and as outlined in the *Oak Woodlands, Watercourse and Wetlands Mitigation and Monitoring Plan, October, 2004*, *Amendment to Mitigation and Monitoring Plan for Oak Woodland, Wetlands and Watercourses; Final Version of Restrictive Covenant Deed, Permit No. 1B03190WNME, April 12, 2005*, and the Compensatory Mitigation Section above. Yearly monitoring reports for the required compensatory mitigation shall be provided to the Regional Water Board by July 15 during each calendar year for a total of five years. Reports shall include photo documentation of the on-site mitigation areas.
- 8) After five years have passed, the mitigation will be evaluated for successful attainment of the final success criteria, and a decision will be made whether additional mitigation measures are necessary to insure that no net loss of wetland and stream course habitat occurs. Reports shall be prepared by a professional consultant with in-depth

experience in wetland and stream course ecosystem creation and function, as well as wetland and stream course mitigation monitoring techniques. Reports shall be submitted to the attention of staff member Andrew Jensen.

- 9) This Order is not transferable. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this Order by letter and shall forward a copy of the letter to the Regional Water Board at the above address.
- 10) To discharge dredged or fill material under this Order, the successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of the Order. The request must contain the requesting entity's full legal name, the state of incorporation if a corporation, address and telephone number of the person(s) responsible for contact with the Regional Water Board. The request must also describe any changes to the Project proposed by the successor-in-interest or confirm that the successor-in-interest intends to implement the Project as described in this Order.
- 11) The Applicant shall provide photos of the completed work to the appropriate Regional Water Board staff person, in order to document compliance. The Applicant shall also provide photos of the completed work areas after the first significant rainfall event in order to ensure that erosion control has been successful.

Water Quality
Certification:

I hereby issue an order [23 CCRs Subsection 3831(e)] certifying that the authorized discharge from the Vichy Springs Community Homes – Unit 2 Subdivision Project, Ukiah, Mendocino County, (WDID No. 1B03190WNME) will comply with the applicable provisions of sections 301 (“Effluent Limitations”), 302 (“Water Quality Related Effluent Limitations”), 303 (“Water Quality Standards and Implementation Plans”), 306 (“National Standards of Performance”), and 307 (“Toxic and Pretreatment Effluent Standards”) of the Clean Water Act [33 USC Subsection

1341 (a)(1)] , and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge

and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification (enclosed).

Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicant's project description, and b) compliance with all applicable requirements of the Regional Water Board's Water Quality Control Plan for the North Coast Region (Basin Plan).

Expiration: The authorization of this certification for any dredge and fill activities expires on October 15, 2010. Conditions and monitoring requirements outlined in this certification are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

Please notify Andrew Jensen of my staff at (707) 576-2683 prior to construction (pursuant to Additional Condition No. 1 above) so that we can answer any public inquiries about the work.

Sincerely,

Catherine E. Kuhlman
Executive Officer

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Enclosure: State Water Resources Control Board Order No. 2003-0017-DWQ, General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification ____

cc: Ms. Corrine Gray, Department of Fish and Game, Region 3, P.O. Box 47, Yountville, CA 94599
Mr. Peter Straub, U.S. Army Corps of Engineers, Regulatory Branch, 333 Market Street, San Francisco, CA 94105
Mendocino County Planning and Building Services, 501 Low Gap Road, Room 1440, Ukiah, CA 95482